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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,799	11/26/2003	Paul G. Ritchie	END-5123	9092
27777	7590	03/11/2005	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			JOHNSON III, HENRY M	
		ART UNIT	PAPER NUMBER	
		3739		

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/723,799	RITCHIE ET AL.	
Examiner	Art Unit		
Henry M Johnson, III	3739		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 19 March 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-3 and 5-20 is/are rejected.

7)  Claim(s) 4 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 26 November 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 122203.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Objections***

Claims 11-20 are objected to because of the following informalities: the temperature sensor in claim 11 is not capable of providing closed loop operation by itself. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear how data is received (rather than generated based on calculations) by the processor. No input devices are cited other than memory.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication US 2004/0122419 to Neuberger. Neuberger discloses a medical radiation treatment system identifying and monitoring the use of disposable or reusable optical fibers or other optical accessories. The treatment system comprises a radiation source unit

connected to a recognition/control unit, and a medical radiation delivery system connected to an identification/recording unit (abstract). This is especially useful for single-use disposable devices and for reusable devices that have a maximum effective lifetime (paragraph 0034). The information contained in the memory is disclosed as not only including use and identification information, but may also include information on power limits, duration limits, permissible wavelength ranges, and other information (paragraph 0036). A processor is taught as a control device (paragraph 0037) to track and update the memory data and perform warning and control functions (paragraph 0014). The warning is interpreted as an "approaching limit" and control as disabling or preventing the laser operation. Neuberger discloses a write-back feature that updates the memory using processor provided data (abstract). Note that claim 6 cites values for memory and disclosed memory is capable of storage of the values.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication US 2004/0122419 to Neuberger in view of U.S. Patent 4,822,997 to Fuller et al. Neuberger is discussed above, and while disclosing storage of device identification information, does not specifically teach storage of the manufacturing date. Fuller et al. teach an apparatus with non-volatile memory operatively associated with an optical conductor for storing a cumulative usage value representative of the cumulative usage of the conductor. A device responsive to a parameter of use generates a signal representative of

usage of the conductor. A circuit is provided which is responsive to the signal and is operatively associated with the memory for generating from the signal a usage value and then generating from the usage value and cumulative usage value stored in the memory an updated cumulative usage value representative of the total cumulative usage of the conductor, and for replacing the cumulative usage value in the memory with the updated cumulative usage value (abstract).

Fuller et al. teach storage of the fiber manufacture date (Col. 4, line 31). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the manufacturing date as taught by Fuller et al. in the identifying data of Neuberger as Neuberger implies the use of such data in the discussion of maximum effective life [of the optical fiber].

Claims 11-15, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication US 2004/0122419 to Neuberger in view of WO 93/15664 to Makower et al. Neuberger is discussed above, but does not disclose a temperature sensor at the distal end of the optical fiber. Makower et al. teach a medical treatment device with a temperature sensor on the distal end of the optical fiber (Fig. 10, # 46). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the temperature sensor as taught by Makower et al. in the fiber of Neuberger as it is a well known in the art to monitor the temperature at treatment site.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication US 2004/0122419 to Neuberger in view of WO 93/15664 to Makower et al. and further in view of U.S. Patent 4,822,997 to Fuller et al. All are discussed above. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the manufacturing date as taught by Fuller et al. in the identifying data of Neuberger/Makower et al. as Neuberger implies the use of such data in the discussion of maximum effective life [of the optical fiber].

***Allowable Subject Matter***

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 5,076,653 to Kayashima et al. disclose coatings to optical fibers to extend the shelf life, thus establishing a recognition and concern in the art over optical fiber shelf life.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Henry M. Johnson, III  
Patent Examiner  
Art Unit 3739